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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. John C. CARPENTER, individually and as Agent for the Citizens United for the South Canyon Road; O. Q. JOHNSON, individually; and Grant GERBER, individually, Defendants.	)	CV-N-99-00547-DWH (RAM)

COMPLAINT

For its Complaint against Defendants, John C. Carpenter, O. Q. Johnson and Grant Gerber, the United States of America alleges as follows:

I. NATURE OF THE COMPLAINT

1. This Complaint seeks declaratory and injunctive relief against Defendants to prevent their unlawful trespass upon property belonging to the United States and to prevent potential violations of the federal Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq., and its implementing regulations.

2. The events leading to this Complaint center upon the South Canyon Road in the Humboldt-Toiyabe National Forest. The South Canyon Road is a dirt road that runs along the West fork of the Jarbidge River. It is located just south of the town of Jarbidge, Nevada, on land owned by the United States and managed by the United States Forest Service ("Forest Service").

3. Defendants have expressed their intent to enter upon the land owned by the United States for the purpose of performing construction on the South Canyon Road. Any construction on their part will constitute a wrongful trespass on land owned by the United States and will violate the Endangered Species Act.

4. The United States brings its claims under common law trespass, the Endangered Species Act and the Declaratory Judgment Act.

II. THE PARTIES

5. Plaintiff is the United States of America. The United States, as sovereign, owns the land in, on, under and around the South Canyon Road where the events leading to this action took place.

6. Defendant John C. Carpenter is an individual and a resident of the State of Nevada. He also serves as a Nevada State Assemblyman.

7. Defendant O. Q. Johnson is an individual and a resident of the State of Nevada.

8. Defendant Grant Gerber is an individual and a resident of the State

of Nevada.

III. JURISDICTION AND VENUE

9. This Court's jurisdiction arises under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1345 (United States as Plaintiff), 16 U.S.C. § 1540 (c) (the Endangered Species Act) and 28 U.S.C. § 2201 (the Declaratory Judgment Act).

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the acts giving rise to this action occurred in Elko County, Nevada.

IV. FACTS GIVING RISE TO CLAIMS

11. The South Canyon Road begins near the end of a switchback in a road designated as Elko County Road 748 approximately four miles south of the town of Jarbidge, Nevada, and ends approximately one fourth of a mile from the edge of the Jarbidge Wilderness at the Snowslide Gulch trail head.

12. The South Canyon Road runs along a portion of the West Fork of the Jarbidge River.

13. The South Canyon Road lies on land owned and managed by the United States.

14. The Bull Trout live in and migrate through the West Fork of the Jarbidge River.

15. The Secretary of the Interior properly has listed the Bull Trout as a "Threatened" species on the Endangered Species List.

16. Defendants Carpenter, Johnson and Gerber have proposed, planned and stated that they will perform construction on the South Canyon Road, beginning on or about October 8, 1999.

17. Defendants' proposed construction on the South Canyon Road will

result in altering and re-diverting the West Fork of the Jarbidge River.

18, Defendants' proposed construction on the South Canyon Road will "harm" the Bull Trout and result in a "take" of the Bull Trout, all in violation of the Endangered Species Act, 16 U.S.C. § 1538(a)(1)(G), 50 C.F.R. § 17.31.

19. Defendants' proposed construction on the South Canyon Road will constitute a wrongful trespass on lands owned and managed by the United States.

20. Defendants' have failed to obtain any permits for construction on the South Canyon Road as required under federal law.

IV
CAUSES OF ACTION

FIRST CAUSE OF ACTION
(VIOLATION OF ENDANGERED SPECIES ACT)

21. Paragraphs 1through20 are incorporated by reference.

22. Under the Endangered Species Act and its enabling regulations, it is unlawful for any person to "take" any species listed as endangered or threatened.

23. The Bull Trout are listed as a threatened species.

24. Unless enjoined from doing so, Defendants' proposed construction on the South Canyon Road will result in an unlawful "take" under the Endangered Species Act.

25. Defendants have further failed to obtain any permits required under the Endangered Species Act, as they are required to do.

26. Plaintiff seeks declaratory relief and a preliminary and permanent injunction, enjoining Defendants from performing any construction on the South Canyon Road without first obtaining appropriate authorization or permits under the Endangered Species Act.

SECOND CAUSE OF ACTION
(TRESPASS)

27. Paragraphs 1 through 26 are incorporated by reference.

28. Defendants have failed to obtain appropriate permits to enter upon land owned and managed by the United States to perform construction on the South Canyon Road.

29. Defendants' proposed construction will constitute a wrongful trespass under common law.

30. Defendants' proposed construction will result in damage to the United States.

31. Plaintiff seeks declaratory relief and a preliminary and permanent injunction, enjoining Defendants' from entering upon lands of the United States without appropriate permits required under federal regulations.

IV
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment for Plaintiff and against Defendants:

1. Declaring that Defendants' proposed construction on the South Canyon Road violates the Endangered Species Act;
2. Declaring that Defendants' proposed construction on the South Canyon Road constitutes a wrongful trespass against the United States; and
3. Enjoining Defendants from performing any construction on the South Canyon Road without obtaining appropriate permits under federal law.

Respectfully submitted,

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By: ______________________
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Dated: October 7, 1999.